

PROPOSED DRAFT

STATE OF COLORADO }
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COUNTY OF ELBERT }

At a regular meeting of the Board of County Commissioners for Elbert County, State of Colorado, held at the Courthouse in Kiowa on Wednesday, the 9th day of May A.D. 2012, there were present:

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|---------------|----------------------------|
| Del Schwab | Commissioner Chairman |
| John Shipper | Commissioner |
| Kurt Schlegel | Commissioner |
| Doni Trenkle | Deputy, Clerk to the Board |

When the following proceedings, among other, were had and done, to wit:

ORDINANCE NO. 12-01

**AN ORDINANCE REGARDING THE ACCUMULATION AND REMOVAL OF JUNK
AND RUBBISH IN ELBERT COUNTY**

WHEREAS, pursuant to section 30-15-401, C.R.S., as amended, the Board of County Commissioners of Elbert County, Colorado (hereinafter the "Board"), has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; and

WHEREAS, residents of Elbert County experience problems with the accumulation of junk and rubbish upon adjacent or nearby properties; and

WHEREAS, it is the opinion of the Board that in order to preserve the public health, safety and welfare of the citizens of Elbert County, the Board should take the following action.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of the County of Elbert, State of Colorado, that Ordinance Number 11-01 An Ordinance Regarding the Accumulation and Removal of Rubbish, Nuisances, and Junked/Inoperable Motor Vehicles in Elbert County, enacted by the Board on May 25, 2011, is hereby repealed and replaced in whole effective upon the adoption of Ordinance Number 12-01; and

BE IT FURTHER ORDAINED by the Board of County Commissioners of the County of Elbert, State of Colorado, as follows:

Section 1. Purpose.

1.1 The purpose of this Ordinance is to protect the public health, safety and welfare of the citizens and residents of Elbert County, Colorado, by eliminating and controlling the accumulation of junk and rubbish within the County, which if not eliminated or controlled, can

result in visual blight; attractive nuisances; incompatibility with existing land uses; hazardous or toxic substances being deposited in unapproved sites; attraction of disease-infested rodents and other vermin; air, land, water, and noise pollution; and fire and other hazards.

Section 2. Authority.

2.1 This Ordinance is authorized pursuant to among other things, section 30-15-401, C.R.S., *et seq.*, as amended.

Section 3. Applicability.

3.1 This Ordinance shall apply throughout the unincorporated area of Elbert County, including public and state lands.

3.2 This Ordinance shall apply within the corporate limits of any incorporated town or city within Elbert County which elects by appropriate ordinance or resolution to have the provisions of this Ordinance apply therein, and upon which an intergovernmental agreement between Elbert County and such incorporated town or city has been entered into relating thereto.

Section 4. Definitions.

4.1 Agricultural Land. Shall have the meaning as set forth in 39-1-102 (1.6), C.R.S.

4.2 Board. The Board of County Commissioners of Elbert County, Colorado.

4.3 County. The unincorporated areas of Elbert County, including public and state lands, and the incorporated limits of any town or city within Elbert County which elects by appropriate ordinance or resolution to have the provisions of this Ordinance apply therein and upon which an intergovernmental agreement between Elbert County and such incorporated town or city has been entered into relating thereto.

4.4 Enforcement Officer. The Elbert County Sheriff is the designated Elbert County employee with the authority under this Ordinance to pursue violations. The Elbert County Sheriff may designate his/her authorities under this Ordinance to other Elbert County employees in his/her discretion.

4.5 Industrial Tract. A lot, parcel or tract of land zoned for such use and classified by the Elbert County Assessor's Office as industrial.

4.6 Junk. Any old or scrap copper; brass; glass; rope; rags; batteries; paper or cardboard; trash; tires or rubber debris; waste; junked, inoperable, dismantled or wrecked automobiles or parts thereof; appliances or parts thereof; iron, steel, and other old or scrap ferrous or non-ferrous materials; disposable packages or containers; furniture; carpet or remnants thereof; or construction debris disposed of on the ground and not stored within a completely enclosed building or completely screened enclosure. These types of materials may not permitted to be stored in an abandoned or junked mobile home, recreation vehicle or vehicle.

4.7 Property Owner. The owner of record of the property as shown in the records of

the Elbert County Assessor's Office.

4.8 Rubbish. Any trash, junk, garbage, litter, refuse, debris, lawn or garden waste, remnant or discarded construction or remodeling or repair materials, unlicensed or inoperable motor vehicles including without limitation mobile or manufactured homes, motor vehicle parts or tires, newspapers, magazines, packaging materials, waste paper or cardboard, dead animal carcasses, unwanted or discarded household items including but not limited to appliances and furniture, metal, scrap, any other items that has been abandoned or discarded, and any object or material which causes or is likely to cause a public hazard or nuisance. Rubbish does not include collector's items properly stored in accordance with 42-12-103, C.R.S.

Section 5. Unlawful Acts.

5.1 It shall be unlawful for any owner to cause or allow the accumulation of junk or rubbish on any lot, parcel, or tract of land in the County, except industrial tracts of ten or more acres and agricultural land, under such owner's control, possession, or ownership, or upon any County road or right-of-way, private road, alley, or sidewalk adjacent to such lot or tract of land.

5.2 It shall be unlawful for any person to dump or dispose of any junk or rubbish in the County except in those places permitted and/or duly authorized by the Board for such purpose.

Section 6. Complaints.

6.1 Any person may file a complaint that a property in Elbert County is in violation of this Ordinance. Additionally, complaints may be filed by the Elbert County Sheriff's Office, County employees and elected officials of the County.

6.2 Complaints must be in writing on a form provided by the Elbert County Sheriff's Office. The County shall not be obligated to investigate anonymous complaints or complaints that are not filed in writing.

6.3 Complaints shall be filed in the Elbert County Sheriff's Office, 751 Ute Avenue, Kiowa, Colorado for processing.

Section 7. Notice and Order.

7.1 In the event that junk or rubbish accumulates on any lot, parcel, or tract of land in the County, or upon any County road or right-of-way, alley, or sidewalk adjacent to such lot, parcel, or tract of land, and a complaint is filed in writing pursuant to Section 6, an Enforcement Officer shall conduct an investigation of the site to determine if an unlawful condition does exist. In the event that the Enforcement Officer determines that an unlawful condition does exist, a Notice and Order shall be issued to the Property Owner.

7.2 The Notice and Order shall:

- (a) Provide a description of the violation and measures required to correct the violation.

- (b) Require the Property Owner to remove such junk or rubbish within seven (7) days from the date of said notice, unless the Enforcement Office determines in his/her sole discretion that a longer time period should be allowed or that a shorter time period is justified because the violation appears to present an immediate risk to the public health, welfare, or safety.
- (c) Include a statement that if the Property Owner believes that the Notice and Order has been issued in error or without just cause, the Property Owner may request, in writing, no later than seven (7) business days after the issuance of the notice of violation, to appear before the Board of County Commissioners for a show cause hearing as to why such notice of violation should not be enforced.

7.3 A Notice and Order shall be deemed issued by the following placing the same in U.S. Mail, certified, return receipt requested, to the Property Owner's last known address as indicated on the County's assessment roll. Service shall be complete upon mailing or personal service in the same manner provided in Rule 304 of the Colorado Rules of County Court Civil Procedure.

7.4 If the Enforcement Officer is unable to locate the owner for personal service or service via U.S. Mail, after reasonable efforts, the Notice and Order may be published in such a manner as is in accordance with Rule 304 of the Colorado Rules of County Court Civil Procedure concerning publication, except that said publication shall be for a period of seven (7) days, and the Notice and Order shall be posted in a conspicuous place at or on the subject property.

Section 8. Show Cause Hearing.

8.1 A request by the Property Owner for a show cause hearing shall be in writing and submitted no later than seven (7) business days after the date of the Notice and Order. Upon the request for the hearing, and pending the Board's decision, the Notice and Order shall be stayed.

8.2 The requested show cause hearing shall set for a date as soon as practicable considering the Board's calendar. Written notice of the hearing shall be issued via U.S. Mail, certified, return receipt requested, to the Property Owner and any other party who has expressed an interest in the matter, including the complainant, at least seven (7) days prior to the date of the hearing.

8.3 The Property Owner shall have a full and fair opportunity to present any relevant evidence or witnesses to the Board in order to establish why the Notice and Order should not be enforced or delayed in its enforcement. Any other interested party shall have the same opportunity to present evidence or witnesses. The Board shall consider all such evidence and testimony, along with any presentation made by the County staff or other governmental agency, in reaching its decision in accordance with this Ordinance.

Section 9. Administrative Entry & Seizure Warrant.

9.1 If the Property Owner fails or refuses to remove such junk or rubbish within the time period established in the Notice and Order issued in accordance with Section 7 or from the decision of the Board pursuant to Section 8, the Enforcement Officer, without further notice to the Property Owner, may initiate proceedings for an administrative entry and seizure warrant through the county or district court having jurisdiction over the property from which the junk or rubbish shall be removed authorizing the County to enter the property and remove the junk or rubbish.

9.2 A sworn or affirmed affidavit shall be prepared and submitted, along with supporting documents or pictures, to the court. The affidavit shall establish the factual basis for the issuance of the warrant. Documents presented to the court shall include the following:

- (a) A copy of this Ordinance;
- (b) Evidence that the Property Owner has received notice of the violation and has failed to remove the junk or rubbish within a reasonable prescribed period of time;
- (c) A general description of the location of the property;
- (d) A general list of any junk or rubbish to be removed from the property; and
- (e) The proposed disposal or temporary impoundment of such junk or rubbish, whichever the court deems appropriate.

9.3 Within ten (10) days following the date of issuance of an administrative entry and seizure warrant, the warrant shall be executed in accordance with the directions by the issuing court. A copy of the issued warrant shall be provided or mailed to the Property Owner and proof of execution of such warrant, including a written inventory of any property impounded, shall be submitted to the issuing court.

Section 10. Impoundment and Disposal.

10.1 Any junk or rubbish removed from the property pursuant to the an administrative entry and seizure warrant shall be dealt with in accordance with the terms of such warrant, including the impoundment of junk or rubbish or the disposal of junk or rubbish in the manner specified by the court issuing the warrant.

Section 11. Removal of Rubbish by County: Assessment of Costs; Collection.

11.1 Any removal of junk or rubbish performed by the County upon notice to and failure of the Property Owner to remove such junk or rubbish, either by and through County forces, contract, or otherwise, the County shall assess the reasonable cost thereof, including five percent (5%) for inspection and other incidental costs in connection therewith upon the lots and tracts from which such junk or rubbish has been removed.

11.2 Any assessment prescribed in Section 11.1 which is not paid within sixty (60) days from the date of the mailing of an invoice may be certified by the Elbert County Clerk and

Recorder to the Elbert County Treasurer, who shall collect such assessment, together with a ten (10%) percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall govern and apply to the collection of assessments pursuant to this Section 11.

11.3 Any assessment pursuant to Section 11.1 shall be a lien against such lot, parcel, or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.

Section 12. Enforcement and Penalties.

12.1 The Board hereby designates the County Attorney, or his/her designee, as the County's legal representative in the civil enforcement of the provisions of this Ordinance.

12.2 If so directed by the Board, a criminal prosecution may be brought against the Property Owner in accordance with sections 16-2-201, 30-15-402 and 30-15-410, C.R.S., as amended. All prosecutions for all offenses under this ordinance shall be by the District Attorney according to the Colorado County Court Rules of Criminal Procedure.

12.3 Each day that such rubbish remains on the premises after the date of expiration of the time period established in the Notice and Order issued in accordance with Section 7 or from the decision of the Board pursuant to Section 8 for removal or abatement shall constitute a separate violation.

12.4 Violations of the provisions of this Ordinance shall be punishable by a fine as follows:

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| (a) | First Violation: | \$100.00 |
| (b) | Second Violation: | \$200.00 |
| (c) | Third Violation: | \$400.00 |
| (d) | Subsequent Violations: | \$600.00 |

12.5 All fines paid for the violation of this ordinance shall be in negotiable funds made payable to Elbert County and submitted to the Elbert County Treasurer's Office and deposited into the general fund of Elbert County. All surcharges collected shall be paid to the Clerk of the Court and subsequently credited to the Victims and Witnesses Assistance and Law Enforcement Fund of the Eighteenth Judicial District of the State of Colorado pursuant to section 30-15-402(2), C.R.S., as amended.

12.6 The remedies provided in this Ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, ordinance, rule, order or regulation.

Section 13. Severability.

13.1 If any section, subsection, clause, sentence, phrase or part of this Ordinance is declared invalid by a court of competent jurisdiction, such invalidity shall not affect, impair or invalidate any remaining provisions of this Ordinance.

Section 14. Conflicting Provisions.

14.1 Where any provision of this Ordinance conflicts with any other provision of this Ordinance, or any other law or Ordinance, the more stringent shall apply.

Section 15. Interpretation.

15.1 This ordinance shall be so interpreted and construed as to effectuate its general purpose to reduce and regulate the accumulation of junk and/or rubbish in Elbert County.

Section 16. Effective date.

16.1 This Ordinance shall take effect immediately upon adoption on the second and final reading and shall remain in effect until such time as this ordinance is amended, temporarily suspended or repealed.

Section 17. Emergency.

17.1 The Board hereby finds, determines and declares that this ordinance is necessary for the immediate preservation and protection of the health, safety and welfare of the citizens of Elbert County, Colorado.

Section 18. Certification.

18.1 The Elbert County Clerk and Recorder shall certify to the passage of this Ordinance and make not less than three copies of the adopted ordinance available for inspection by the public during regular business hours.

INTRODUCED, READ AND ADOPTED ON FIRST READING, on the 9th day of May, 2012, and ordered published in full in the Elbert County News.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

BY: _____
DEL SCHWAB, CHAIR

ATTEST:

BY: _____
**DIANA HARTSOUGH
ELBERT COUNTY CLERK AND RECORDER**

ADOPTED ON SECOND AND FINAL READING, AS AMENDED, on the _____ day of _____, 2012, and ordered published in its entirety in the Elbert County News.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

BY: _____
DEL SCHWAB, CHAIR

ATTEST:

BY: _____
**DIANA HARTSOUGH
ELBERT COUNTY CLERK AND RECORDER**